TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No. CA919980011US1

In Re Application Of: Storisteanu, et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/291,147	April 15, 1999	A. R. Yuan	48150	2176	1732

Invention: **FOR ACTIVE MECHANISM IN A LIVE PARSING EDITOR**

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Dated: **June 27, 2005**

Frederick E. Cooperrider, Esq.
Registration No. 36,769

McGinn & Gibb, PLLC
8321 Old Courthouse Rd.
Suite 200
Vienna, VA 22182

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

Storisteanu et al.

Serial No.: **09/291,147** Group Art Unit: 2176

Filed: April 15, 1999 Examiner: Yuan, A. R.

For: **AN ACTIVEMARK MECHANISM IN A LIVE PARSING EDITOR**

Commissioner of Patents
Alexanderia, VA 22313-1450

APPELLANTS' BRIEF ON APPEAL

Sir:

Appellants respectfully appeal the rejection of claims 1-16 and 21-38 in the Office Action dated January 27, 2005. A Notice of Appeal was timely filed on April 26, 2005.

I. REAL PARTY IN INTEREST

The real party in interest is International Business Machines Corporation, assignee of 100% interest of the above-referenced patent application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or Assignee which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 1-16 and 21-38 are all the claims presently pending in the application.

Claims 36-38 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to be enabled.

Claims 1-7 and 25-38 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1-16 and 21-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over "LPEX User's Guide and Reference", 03/1996, IBM, 2nd Ed., pp. 1-37, in view of "Incrementally Imbedded Messages in an Edit View", 11/1995, IBM Technical Disclosure Bulletin, Vol. 38, Issue 11, pp. 1-5.

All rejections on the pending claims are being appealed.

IV. STATUS OF AMENDMENTS

An Amendment Under 37 CFR §1.116 was filed on April 4, 2005. In the Advisory Action dated April 20, 2005, the Examiner indicated that the arguments in the Amendment Under 37 CFR §1.116 were not persuasive and that the rejection currently of record was maintained but that the Amendment would be entered into the record upon filing this Appeal Brief.

The claims in the Appendix reflect the version of the claims of the Amendment Under 37 CFR §1.116 as filed on April 4, 2005.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Applicant's invention, as defined, for example, in the non-limiting embodiment of independent claim 1 (and substantially similarly in independent claims 8 and 13) is directed to a processing system 10 for processing a document, comprising a plurality of modules on a signal-bearing medium that tangibly embodies a program of machine-readable instructions executable by a digital processing apparatus (Figure 1, lines 1-12 of page 5). The plurality of modules includes a programmable text processing module having

means for loading the document (lines 18-25 of page 5) and a parsing editor for initially parsing the document and thereafter incrementally parsing changes committed in the document (line 25 of page 7 – line 10 of page 8).

A mark control module (lines 1-4 of page 6) provides a means for setting a plurality of marks in the document, means for modifying the marks, and means for clearing the marks, and each of the marks comprising selected information in the document and means for linking the selected information with a command (lines 12-14 of page 7). The linking means and the means for setting are responsive to the operation of the parsing editor without user intervention (lines 21-24 of page 7). A graphical user interface module provides a means for displaying the document and means for controlling the display of the document (lines 5-13 of page 6). An edit control module provides means for controlling the text processing module, means for controlling the mark control module, and means for controlling the graphical user interface module (lines 13-17 of page 5).

The conventional systems, such as those discussed below and in the Related Art section of the present application, do not have such a structure, particularly a structure directed to a mechanism to link selected information with a command, and fail to provide for such an operation.

Such features are clearly not taught or suggested by the cited references.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Appellant presents the following issue for review by the Board of Patent Appeals and Interferences:

ISSUE 1: THE ENABLEMENT REJECTION FOR CLAIMS 36-38

Whether the rejection under 35 U.S.C. § 112, first paragraph, can be maintained for lack of enablement, in view of the specific locations identified by Appellants where the support for these claims are found in the specification.

ISSUE 2: THE REJECTION BASED 35 USC § 101

Whether the rejection under 35 U.S.C. § 101 can be maintained for claims 1-7 and 25-38, in view of the claim amendments included in the listing of the Claims Appendix, wherein is stated that the system comprises a plurality of modules on a signal-bearing medium that tangibly embodies a program of machine-readable instructions.

ISSUE 3: THE OBVIOUSNESS REJECTION BASED ON "LPEX USER'S GUIDE AND REFERENCE"

Whether the rejection under 35 U.S.C. § 103(a) can be maintained, in view of the fact that none of the prior art references can be reasonably described as teaching or suggesting a means for linking selected information with a command, as clearly described in the specification and as required by the plain meaning of the claim language of the independent claims.

VII. ARGUMENTS

ISSUE # 1: THE ENABLEMENT REJECTION FOR CLAIMS 36-38

A. THE EXAMINER'S POSITION ON THE ENABLEMENT ISSUE

The Examiner alleges that recently-added claims 36-38 contain subject matter which was not enabled in the specification.

In Paragraph 4 on page 2 of the Office Action dated January 27, 2005, the Examiner states:

"*Regarding dependent claim 36, the added claim limitation "wherein said mark control module creates at least one data structure for each said set mark in said document, said at least one data structure being maintained outside said document", is not specifically described/enabled in Applicant's specification. Applicant is advised against the addition of new matter.*

Regarding dependent claims 37-38, the added claim limitation "wherein said activemark comprises an instantiation of at least one data structure that is maintained outside said document" is not specifically described/enabled in Applicant's specification. Applicant is advised against the addition of new matter."

B. APPELLANTS' POSITION ON THE ENABLEMENT ISSUE

First, the Examiner's position is flawed as a matter of law.

As clearly described at MPEP § 2106 V. B: "*An applicant's specification must enable a person skilled in the art to make and use the claimed invention without undue experimentation. The fact that experimentation is complex, however, will not make it undue if a person of skill in the art typically engages in such complex experimentation. For a computer related invention, the disclosure must enable a skilled artisan to configure the computer to possess the requisite functionality, and, where applicable, interrelate the computer with other elements to yield the claimed invention, without the exercise of undue experimentation. The specification should disclose how to configure a computer to possess the requisite functionality or how to integrate the programmed computer with other elements of the invention, unless a skilled artisan would known how to do so without such disclosure.*"

Appellants submit that the data structure aspect of the present invention is clearly described in Figure 1. The data structure characteristic of the present invention, including its characteristic of being outside the document being parsed is clearly described throughout the specification, and particularly at lines 8-12 of page 5, lines 11-24 of page 7, with emphasis on line 15, and lines 3-4 and 7-24 of page 12. It is noted that page 12 even includes an exemplary listing of the components of one such data structure for an activemark of the present invention.

Secondly, the Examiner's position is flawed as a matter of fact.

Appellants, therefore, in view of the specific locations recited above, respectfully submit that one of ordinary skill in the art could not in any way agree with the Examiner

that the data structure language of claims 36-38 was not described in the original specification in a manner that is enabling to one of ordinary skill in the art. The process of forming data structures is well understood in the art of computer programming, so that one of ordinary skill in the art would have no problem implementing the data structures in the context of the present invention, particularly in view of Figure 1 and the discussion throughout the specification, and particularly at lines 8-12 of page 5, lines 11-24 of page 7, with emphasis on line 15, and lines 3-4 and 7-24 of page 12.

Thus, Appellants submit that the specification does indeed clearly describe, to one of ordinary skill in the art, that data structures are used in the present invention, that these data structures permit marks to be retained even though the document has been closed (e.g., because they are external to the document being parsed). Appellants further submit that one of ordinary skill in the art would not require an undue experimentation in order to implement these data structures.

ISSUE # 2: THE REJECTION UNDER 35 USC §101 (STATUTORY SUBJECT MATTER)

A. THE EXAMINER'S POSITION ON THE ISSUE OF STATUTORY SUBJECT MATTER

In Paragraph 6 on page 3 of the Office Action, the Examiner alleges: "*Regarding independent claim 1, the claimed language "programmable text processing module", "mark control module", "graphical user interface module", and "an edit control module" refers to a software per se and are not tangibly embodied on a computer readable medium or hardware.*"

B. APPELLANTS' POSITION ON THE ISSUE OF STATUTORY SUBJECT MATTER

First, the Examiner's position is flawed as a matter of law.

According to MPEP § 2106 IV B (a): "*Similarly, computer programs claimed as computer listings* per se, *i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. Accordingly, it is important to distinguish claims that define descriptive material* per se *from claims that define statutory inventions.*"

The Examiner is understood as alleging that the terminology "module" renders the claimed invention as a "computer listing *per se*", thereby rendering such claims non-statutory.

However, the Examiner's interpretation ignores the plain meaning of independent claim 1 language, wherein the preamble specifically defines the scope of the claim as directed to a "processing system", not a "computer listing", as would be required to maintain this rejection.

Moreover, in order to expedite prosecution, Appellants have amended independent claim 1 to incorporate wording of functionality.

Secondly, the Examiner's position is flawed as a matter of fact.

Appellants have already pointed out, in the Amendment Under 37 CFR § 1.111 filed on November 12, 2004, that one of ordinary skill in the art would consider a "system" as directed to hardware, rather than a software computer listing.

As evidence of Appellants' assertion, the following definition of the word "system" is recited from Webster's Universal College Dictionary, 1997 edition, Random House, Inc.:

12. a working combination of computer hardware, software, and data communication devices.

Thus, Appellants submit that it is clear that one of ordinary skill in the art would not agree with the Examiner's position that "processing system" is considered to mean a "computer listing."

ISSUE # 3: THE PRIOR ART REJECTION

A. THE EXAMINER'S POSITION ON THE PRIOR ART REJECTION

The Examiner alleges on page 4 of the Office Action dated January 27, 2005, that, regarding independent claims 1, 8, and 13 and dependent claims 21-25, 27, 28, and 32, LPEX discloses the claimed invention, except, as further alleged on page 5 of the Office Action, as follows:

"*However, LPEX does not explicitly disclose "incrementally parsing changes committed in said document" and "linking said selected information with a command". IBM "Incrementally Imbedded Messages in a[n] Edit View" on pages 1 and 4 teaches an incremental parser and pages 1 and 2 teaches a message is inserted into the edit view which refers to the text immediately above; the parser highlights the text in error and provides a message that describes the error; once the error is corrected, the parser re-parses and removes all messages, in other words, the messages can be commands or suggestions for correcting an error from the edit window.*

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified (sic) IBM into LPEX to provide a way to incrementally parse a document and provide a message with each highlighted block of text, as taught by IBM, incorporated into the system of LPEX, in order to help users write programs in a Live Parsing Editing environment."

Thus, the Examiner is understood as alleging that the primary reference "LPEX User's Guide and Reference" (hereinafter, "LPEX") teaches the present invention defined by independent claims 1, 8, and 13, except the Examiner concedes that LPEX fails to teach or suggest "... linking said selected information with a command." To overcome this deficiency, the Examiner relies upon the IBM article "Incrementally Imbedded Messages in an Edit View" (hereinafter, "IBM") and considers that one of ordinary skill in the art would have been motivated to modify LPEX in accordance with IBM, not because of a suggestion within either of the prior art references, but because the Examiner alleges that such modification would have "*... helped users write programs in a Live Parsing Editing environment.*"

B. APPELLANTS' POSITION ON THE PRIOR ART REJECTION

First, the Examiner's position is flawed as a matter of law.

It is clear that the rejection is faulty by failing to meet the Examiner's initial burden of providing a proper motivation to modify the primary reference LPEX. The Examiner's attempt to articulate a motivation to combine LPEX with the IBM reference can hardly be considered as anything except a conclusory statement indicating the Examiner's opinion of the result that would be obtained if the primary reference were to be modified.

The Examiner clearly fails to make any attempt to find any suggestion whatsoever from the prior art references themselves. As clearly stated in MPEP § 2143.01 "*The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.*" (emphasis in MPEP itself).

Secondly, the Examiner's position is flawed as a matter of fact.

Moreover, even if LPEX and IBM references were to be combined, the resultant combination would still fail to provide the claimed invention.

First, as best understood, the Examiner considers that ("... *in other words, the messages can be commands or suggestions for correcting an error from the edit window.*") one of ordinary skill in the art considers "error messages" as equivalent to "commands".

Second, LPEX already describes its repertoire of "commands" (see item 7 "Command Menu" on page 3, item 11 "Creating External Commands" on page 4, item 13 "LPEX Commands" on pages 5-8, item 15 "Default Synonyms for LPEX Commands" on page 8, and item 17 "Return Codes for LPEX Commands" on page 8.

The Examiner makes no attempt in the rejection of record to demonstrate that the discussion on page 15 (e.g., "Setting a Mark"), which the Examiner seems to consider as being related to the independent claim limitation describing the mark control module, involves a linking to any of these commands, let alone a "means for linking said selected information with a command."

Appellants further submit that, until such linking capability between the discussion on page 15 to one or more of the various commands listed in LPEX is made, the Examiner has failed to meet the initial burden of a *prima facie* rejection.

It is further submitted that the Examiner's reliance on "IBM" is misplaced, since LPEX already has error messages, and since there is no suggestion in either LPEX or "IBM" that one of ordinary skill in the art considers an error message to be a "command", as the Examiner seems to have done.

Third, error messages are not "selected information in the document", as clearly required in the claim language. Therefore, even if LPEX were to be modified by "IBM", as urged by the Examiner, the plain meaning of the independent claims would not be satisfied.

Hence, turning to the clear language of the claims, in LPEX there is no teaching or suggestion of: "... a mark control module ... and each of said marks comprising selected information in the document and means for linking said selected information with a command ....", as required by claim 1. The remaining independent claims contain similar language.

Fourth, Appellants further submit that the rejection currently of record also contains the following deficiencies in the prior art evaluation, which the Examiner is

requested to clarify or address on the record as a part of her Examiner's Answer.

Relative to the rejection for claims 2, 14, 15, Appellants submit that one of ordinary skill in the art would not consider the highlighted error messages of "IBM" as being "selected marks".

Relative to the rejection for claims 3 and 6, Appellants submit that one of ordinary skill in the art would not consider the user's ability to "... navigate and manipulate messages within an edit window" as equivalent to "activating a command linked with said selected information."

Relative to the rejection for claims 4, 9, and 16, Appellants submit that one of ordinary skill in the art would not consider error messages as equivalent to the "marks" discussed on page 15 of LPEX, which the Examiner seems to consider to be "selected information".

Relative to the rejection for claim 7, Appellants submit that the evaluation fails to properly address that the mark described on page 15 of LPEX is linked to any commands described in LPEX, let alone "selectively linked to any of the commands." The command described on page 17 relates to starting the parsers. Appellants see no discussion on page 20 related to a command and request that the Examiner clarify what exactly is being pointed to on this page. Therefore, it appears that there is no discussion on either page 17 or page 20 that describes that a command can be linked to the mark described on page 15, let alone that any command can be linked to these marks.

Relative to the rejection for claims 10 and 11, Appellants submit that one of ordinary skill in the art would not consider error messages as equivalent to marks discussed on page 15 of LPEX or that highlight error messages is in any way satisfying the description of "... exclusively displayed ... according to conceptual relatedness is by type of activemark." Neither LPEX nor "IBM" teach or suggest different types of "marks" or "error messages".

There are no rejections addressing claims 21-28.

Relative to the rejection for claims 29 and 30, neither of these two claims are evaluated in accordance with the plain meaning of the claim language.

Relative to the rejection for claim 33, the rejection fails to heed the plain meaning of the claim language by evaluating the opposite of the claimed invention.

There is no rejection addressing claim 34.

Relative to the rejection for claims 36-38, Appellants submit that one of ordinary skill in the art would not agree with the Examiner that a macro "... invoked to facilitate the parser for color and emphasize of the data being displayed" is equivalent to a "data structure", as that term is understood in the art. Furthermore, the description in the final line on page 15, clearly teaches against using data structures external to the document being parsed, as follows: "Marks in the document are lost when you close the document."

That is, Appellants submit that, if "marks in the documents" were stored in data structures external to the document, then one of ordinary skill in the art would not have made this statement on page 15 of the primary reference that describes that closing the document causes the marks to be lost.

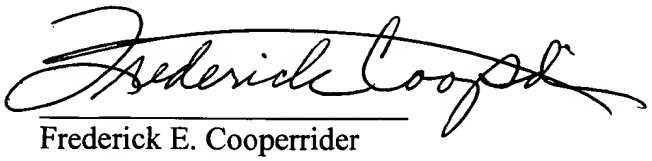
CONCLUSION

In view of the foregoing, Appellants submit that claims 1-21 and 24-33, all the claims presently pending in the application, are clearly enabled and patentably distinct from the prior art of record and in condition for allowance. Thus, the Board is respectfully requested to remove all rejections of claims 1-21 and 24-33.

Please charge any deficiencies and/or credit any overpayments necessary to enter this paper to Assignee's Deposit Account number 50-0510.

Respectfully submitted,

Dated: 6/27/05



Frederick E. Cooperrider
Reg. No. 36,769

McGinn & Gibb, P.C.
8231 Old Courthouse Road, Suite 200
Vienna, VA 22182-3817
(703) 761-4100
Customer Number: 21254

VIII. CLAIMS APPENDIX

Claims, as reflected upon entry of the Amendment Under 37 CFR §1.116 filed on April 4, 2005, as indicated by the Examiner in the Advisory Action dated April 20, 2005:

1. (Currently amended) A processing system for processing a document, said processing system comprising a plurality of modules on a signal-bearing medium that tangibly embodies a program of machine-readable instructions executable by a digital processing apparatus, said plurality of modules comprising:

a programmable text processing module having means for loading the document and a parsing editor for initially parsing the document and thereafter incrementally parsing changes committed in said document;

a mark control module having means for setting a plurality of marks in the document, means for modifying said marks, and means for clearing said marks, and each of said marks comprising selected information in the document and means for linking said selected information with a command, said linking means and said means for setting being responsive to an operation of said parsing editor without user intervention;

a graphical user interface module having means for displaying the document and means for controlling the display of the document; and

an edit control module having means for controlling said text processing module, means for controlling said mark control module, and means for controlling said graphical user interface module.

2. (Original) The processing system as claimed in claim 1, further including a command interface module, said command interface module comprising means for linking commands internal and external to said processing system to one or more selected marks.

3. (Original) The processing system as claimed in claim 1, wherein said linking means includes means, responsive to inputs entered by a user through said graphical user interface module, for activating a command linked with said selected information.

4. (Original) The processing system as claimed in claim 1, wherein said mark control module includes means for changing the appearance of said mark in said document in response to activation of said mark.

5. (Original) The processing system as claimed in claim 1, wherein said edit control module maintains the selected mark synchronized with text being edited in the document.

6. (Previously Presented) The processing system as claimed in claim 1, wherein said linking means of said mark control module includes means, responsive to inputs entered by a user through said graphical user interface, for activating a command linked with said selected information.

7. (Previously Presented) The processing system according to claim 6, wherein said linking means selectively links any piece of text in the document with any of an editor command and macro,

wherein such linking is unspecified in the document loaded in the parsing editor, and

wherein said mark is set to a piece of text by at least one of said parsing editor and an external command running in the edit system.

8. (Previously Presented) In a document processing system having means for loading and storing a document, a parsing editor for initially parsing the document and thereafter incrementally parsing information entered in the document, and a graphical user interface for displaying the document, a mechanism for creating an activemark comprising:

means for identifying selected information in the document; and

means for binding a command to said selected information, said means for binding and said means for identifying being responsive to the operation of said parsing editor without user intervention, and the activemark being created as said parsing editor parses the document.

9. (Original) The activemark mechanism as claimed in claim 8, further including means for modifying the appearance of said selected information in the document being displayed in response to activation of said activemark.

10. (Original) The activemark mechanism according to claim 8, wherein the activemark mechanism allows a selected activemark to be exclusively displayed in the edit view according to conceptual relatedness.

11. (Original) The activemark mechanism according to claim 10, wherein the activemark exclusively displayed in the edit view according to conceptual relatedness is by type of activemark.

12. (Original) The activemark mechanism according to claim 8, wherein said activemark is set to a piece of text by at least one of said parsing editor and an external command running in the edit system.

13. (Previously Presented) In a document processing system having means for loading and storing a document, a parsing editor for initially parsing the document and thereafter incrementally parsing information entered in the document, and a graphical user interface for displaying the document, a method for generating marks in the document, said method comprising:

selecting information for a mark in the document;

linking said selected information to a command, said selecting information and said linking operation being responsive to the parsing by the parsing editor without user intervention; and

activating said mark in response to an activation input.

14. (Original) The method as claimed in claim 13, wherein said command comprises a command internal to the processing system.

15. (Original) The method as claimed in claim 13, wherein said command comprises a command external to the processing system.

16. (Previously Presented) The method as claimed in claim 13, further including altering the appearance of said mark in the document in response to activation of said mark.

17-20. (Canceled)

21. (Previously Presented) A data storage medium on which a computer program is recorded which, in combination with a general purpose computer loaded with an operating system and a parsing editor, equipped to read into memory and execute program data from the data storage medium to perform the method for generating marks in a document according to claim 13.

22. (Previously Presented) A data storage medium on which a computer program is recorded which, in combination with a general purpose computer loaded with an operating system and a parsing editor, equipped to read into memory and execute program data from

the data storage medium to perform the method for generating marks in a document according to claim 14.

23. (Previously Presented) A data storage medium on which a computer program is recorded which, in combination with a general purpose computer loaded with an operating system and a parsing editor, equipped to read into memory and execute program data from the data storage medium to perform the method for generating marks in a document according to claim 15.

24. (Previously Presented) A data storage medium on which a computer program is recorded which, in combination with a general purpose computer loaded with an operating system and a parsing editor, equipped to read into memory and execute program data from the data storage medium to perform the method for generating marks in a document according to claim 16.

25. (Previously Presented) The processing system as claimed in claim 1, wherein said means for setting comprises inserting marks into said document without user intervention in response to a parsing of said document.

26. (Previously Presented) The processing system as claimed in claim 1, wherein said parsing editor adds functionality-equivalent tags to a document without user intervention via the mark control module.

27. (Previously Presented) The processing system as claimed in claim 1, wherein the marks set into said document are present only during a document processing.

28. (Previously Presented) The processing system as claimed in claim 1, wherein said mark control module sets said plurality of marks solely as defined by said parsing editor.

29. (Previously presented) The processing system as claimed in claim 1, wherein said document is parsed by a plurality of parsing editors, each of said plurality of parsing editors providing a unique functionality.

30. (Previously Presented) The processing system as claimed in claim 1, wherein each of said plurality of parsing editors binds different actions to the same activemark set in the document.

31. (Previously Presented) The processing system as claimed in claim 1, wherein said mark control module comprises a module capable of setting said marks in association with any of a plurality of parsing editors and any of a plurality of markup languages.

32. (Previously Presented) The processing system as claimed in claim 1, wherein said marks are defined dynamically by the parsing editor during parsing of the document.

33. (Previously Presented) The processing system as claimed in claim 1, wherein said marks are other than static and other than hard coded in said document.

34. (Previously presented) The processing system as claimed in claim 1, said processing system comprising one of:

an aggregate of said modules stored on a standalone diskette to be inserted into a computer drive unit;

an aggregate of said modules stored on a server to be downloaded by a computer on a network;

a computer having said aggregate of module stored in a hard drive; and

a computer having said aggregate of modules stored in a program memory, said program memory providing instructions for execution of a current program by said computer.

35. (Previously Presented) The processing system as claimed in claim 34, wherein said mark control module comprises a module capable of setting said marks using at least two of a plurality of markup languages.

36. (Previously Presented) The processing system of claim 1, wherein said mark control module creates at least one data structure for each said set mark in said document, said at least one data structure being maintained outside said document.

37. (Previously Presented) The document processing system of claim 8, wherein said activemark comprises an instantiation of at least one data structure that is maintained outside said document.

38. (Previously Presented) The document processing system of claim 13, wherein said mark comprises an instantiation of at least one data structure that is maintained outside said document.

IX. EVIDENCE APPENDIX

(None)

X. RELATED PROCEEDINGS APPENDIX

(None)